

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BREM ROCK, INC., and
JAMES E. SKIRVING,

Appellants,

V.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 81-204

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the denial of an application for a change of water right diversion or withdrawal, came before the Pollution Control Hearings Board, David Akana (presiding) and Gayle Rothrock, at a formal hearing on August 20, 1982, in Lacey.

Appellant Brem Rock, Inc., was represented by William Cusick, its president; appellant James E. Skirving appeared pro se; respondent was represented by Robert E. Mack, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellant James E. Skirving is the owner of certain portions of
4 land within Section 20, Township 24 North, Range 1 E.W.M. in Kitsap
5 County. Appellant Skirving possesses Certificate of Water Right
6 No. G1-00400C (priority date February 22, 1972) to appropriate 500
7 gallons per minute (GPM) of ground water continuously for industrial
8 use up to a maximum of 200 acre feet (AF) per year. The water is
9 appropriated from an infiltration trench and is to be used on
10 Skirving's described land.

11 II

12 Appellant Skirving sought the water for use in a gravel mining,
13 crushing and washing operation on the property. The land and its
14 resources were leased to a trucking outfit in 1977. During that year,
15 a severe drought affected operations at the site. Appellant Skirving
16 and his lessee sought permission from respondent to change the point
17 of withdrawal of the source from a hillside to a location lower in
18 elevation and nearer to Kitsap Lake. Permission was granted to
19 Skirving to take water at the lower elevation until September 30,
20 1977. Appellant Skirving and his lessee excavated an area at the
21 lower elevation. Water was withdrawn through a 15 hp pump and 4 inch
22 pipe at a rate of about 70 GPM.

23 III

24 On September 20, 1977, Skirving applied for a change in the place
25 of withdrawal of his right in Certificate G1-00400C for 200 GPM of

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 water from an infiltration trench for continuous industrial use. The
2 water to be withdrawn under the proposed change would be from land
3 also owned by Skirving and used upon the land described in his
4 certificate.

5 IV

6 In April of 1981, Skirving leased the property to appellant Brem
7 Rock, Inc. Brem Rock is in the business of processing and selling
8 crushed rock. In its processing operation, Brem Rock uses and
9 recycles water but needs a reliable source of water during periods
10 when a depressed water table occurs, usually in August or September of
11 each year. Such water is needed to replace quantities lost to
12 evaporation and drainage. Brem Rock estimates this quantity at about
13 20,000 gallons per week for up to three weeks each year.

14 V

15 Respondent was not informed of Brem Rock's requirements during its
16 consideration of Skirving's application. It processed the application
17 according to the request on the face of the document in good faith but
18 at a rate of 500 GPM of water. Brem Rock's requirements are much
19 smaller than that requested in Skirving's application.

20 VI

21 The proposed change would move the point of withdrawal from a
22 hillside approximately 100 feet above Kitsap Lake (lake elevation, 156
23 feet) to a marsh (marsh elevation, 170 feet) adjacent to and about
24 1000 feet south of Kitsap Lake. Respondent believes the proposed
25 change would allow

1 appellants to use waters from sources other than that allowed in the
2 existing right. Appellant did not present evidence which could show
3 that the proposed change as requested in the application would not use
4 water from such additional sources. Respondent, on the other hand,
5 showed that the proposed point of withdrawal was in direct hydraulic
6 continuity with Kitsap Lake and a tributary to it; that Kitsap Lake
7 and its sources have been administratively closed since June 2, 1942,
8 and by regulation on June 10, 1981; and that the proposed request
9 would divert water from a tributary source of Kitsap Lake resulting in
10 less water being available for the natural flushing of Kitsap Lake.

11 VII

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 In order to change a point of withdrawal of a ground water right,
18 respondent must find, or appellants must show, that 1) the additional
19 or substitute well taps the same body of public ground water as did
20 the original well; 2) use of the original well is discontinued where
21 there is a substitute well; 3) the additional well will not enlarge
22 the right conveyed in the original certificate; and 4) other existing
23 rights will not be impaired. RCW 90.44.100.

II

Respondent did not consider quantifying Skirving's source of ground water, Skirving's present actual use of water, or the possible impairment of other existing rights. Respondent also considered the application to request a withdrawal of 500 GPM rather than the 200 GPM formally requested. It appears that appellants would be satisfied with an additional point of withdrawal for a much smaller quantity and for periodic, rather than continuous, use.

The evidence is insufficient for this Board to order any portion of the change requested by Skirving. However, the evidence is sufficient to show that respondent could profitably review the application again in light of further information it has received. Accordingly, the matter should be remanded for reconsideration.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

1 ORDER

2 The application for a change of water right is remanded to the
3 Department of Ecology for further consideration.

4 DONE this 2nd day of September, 1982.

5 POLLUTION CONTROL HEARINGS BOARD

6 David Akana

7 DAVID AKANA
8 Lawyer Member

9 Gayle Rothrock

10 GAYLE ROTHROCK
11 Acting Chair